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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,953	12/14/2001	Roger Kaiser	10660-046US (10756P6)	7145

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EXAMINER

DOUYON, LORNA M

ART UNIT	PAPER NUMBER
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1751

3

DATE MAILED: 05/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/022,953	Applicant(s) KAISER ET AL.	
	Examiner Lorna M. Douyon	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2</u> . | 6) <input type="checkbox"/> Other: |

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Claim Rejections - 35 USC § 112

1. Claims 4-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 is indefinite in the recital of "other substances" in line 3 because it is not clear what these other substances are.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Harmer et al. (EP 0,116,422), hereinafter "Harmer".

Harmer teaches a hair or body shampoo compositions having an upper aqueous layer and a lower aqueous layer which are temporarily dispersible one in the other upon agitation of the

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composition, wherein the upper layer has dissolved therein at least one detergent and the lower layer contains sodium hexametaphosphate dissolved therein (see abstract). In Example 1, Harmer teaches a hair shampoo wherein the composition was prepared by mixing thoroughly together with stirring 40% aqueous solution of triethanolamine lauryl sulphate (equivalent to one preliminary mixture) and 40% aqueous solution of sodium hexametaphosphate, followed by coconut diethanolamide, ethoxylated cocomonooethanolamide and perfume and filling directly into bottles, and the ratio of the volumes of the upper phase to the lower phase was 6:4 (see page 8, line 10 to page 9, line 3). In Example 3, Harmer teaches a shampoo composition comprising cetyltrimethylammonium bromide (see entire page 10). Harmer also teaches that an oily material may be combined with one or more of the upper or lower layer phases (see page 7, lines 1-8). Harmer teaches the limitations of the instant claims. Hence, Harmer anticipates the claims.

4. Claims 1-3 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Cook et al. (EP 0,175,485), hereinafter "Cook".

Cook teaches a hair or body shampoo having an upper aqueous layer and a lower aqueous layer which are temporarily dispersible one in the other upon agitation of the composition wherein the upper layer has dissolved therein at least one detergent and the lower layer contains a sequestering agent (see abstract). In Example 1, Cook teaches a composition comprising sodium lauryl ether (1) sulphate (70% active), sodium C₁₄₋₁₆ olefin sulphonate (35% active), perfume and water and after standing the composition exhibited two liquid phases in the volume ratio of 70:30

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(see entire page 16). The method of preparing the composition involves mixing together the surfactant, water and colorants, then adding the sequestering agent (see page 15, lines 20-27).

Cook teaches the limitations of the instant claims. Hence, Cook anticipates the claims.

5. Claims 1-3 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by GB 1,247,189, hereinafter "GB '189".

GB '189 teaches liquid compositions for the treatment of natural fibres like hair wherein the composition comprises two aqueous layers (see page 1, lines 10-46). In a system comprising 7.5% by weight ammonium lauryl sulphate, 25.0% by weight hexylene glycol and 67.5% by weight water, a portion of the water is replaced with a solution of citric acid between 11 and 12% by weight and a two-layer system becomes stable (see page 2, lines 61-94). In Example 1, the composition comprises ethoxylated lauryl alcohol with 7 molecules of ethylene oxide wherein the lower layer is 42% by weight and the upper layer is 58% by weight (see page 5, lines 1-21) and in Example 6, the composition comprises alkyldimethylbenzylammonium chloride (see page 6, lines 13-31). GB '189 teaches the limitations of the instant claims. Hence, GB '189 anticipates the claims.

6. Claims 1-8 are rejected under 35 U.S.C. 102(a) as being anticipated by Jeschke et al. (WO 99/47635), hereinafter "Jeschke".

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Jeschke teaches an aqueous liquid multiphase tenside-containing detergents with at least one lower aqueous phase (I) and an upper phase (II) which is immiscible with the first phase and are temporarily transformed into an emulsion when shaken, the detergent being prepared by blending directly from the raw materials, mixing thoroughly and allowing to stand to separate the emulsion (see abstract). In Table 2, Jeschke teaches detergent having a lower aqueous phase (I) containing monoethanolamine, sodium chloride and water, and an aqueous upper phase (II) containing dodecylbenzene sulfonate, C_{12} - C_{14} fatty alcohol + 7EO-ether, dioctyl ether, perfume and water (see pages 12 and 15). Jeschke teaches the limitations of the instant claims. Hence, Jeschke anticipates the claims.

7. Applicant cannot rely upon the foreign priority papers to overcome the rejection over Jeschke because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

8. The prior art made of record and not relied upon is considered pertinent to applicants' disclosure. These references are considered cumulative to or less material than those discussed above.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is (703) 305-3773. The examiner can normally be reached on Mondays-Fridays from 8:00 AM to 4:30 PM.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for this Technology Center is:

(703) 872-9311 - for Official After Final faxes
(703) 872-9310- for all other Official faxes.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center receptionist whose telephone number is (703) 308-0661.

May 14, 2002


Lorna M. Douyon
Primary Examiner
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